

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

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CHRIS LUSBY TAYLOR, NANCY A.
PEPPLE-GONSAVLES, GARY KESSELMAN,
SUSAN SWINTON, DAWN E. STRUCK,
and WILLIAM J. PALMER, as
taxpayers, and on behalf of
themselves and other persons
similarly situated,

Plaintiffs,

v.

JOHN CHIANG, in his capacity
as CONTROLLER OF THE STATE OF
CALIFORNIA, and STEVE WESTLY,
individually,

Defendants.

NO. CIV. S-01-2407 WBS GGH

ORDER

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By minute order on May 8, 2007, this court granted
plaintiffs' motion to substitute John Chiang, the current
Controller of California, for Steve Westly, the former Controller
of California, in both his official and individual capacities.

Federal Rule of Civil Procedure 25(d) provides that

1 "[w]hen a public officer is a party to an action in his official
2 capacity and during its pendency dies, resigns, or otherwise
3 ceases to hold office, the action does not abate and the
4 officer's successor is automatically substituted as a party."
5 Fed. R. Civ. P. 25(d). Therefore, John Chiang is properly
6 substituted for Steve Westly in his official capacity.¹

7 However, Rule 25(d) is not the proper mechanism to add
8 John Chiang in his individual capacity. To accomplish that,
9 plaintiffs must make a motion pursuant to Federal Rule of Civil
10 Procedure 21. See Jackson v. Hayakawa, 682 F.2d 1344, 1348 (9th
11 Cir. 1982) (official before the court in his official capacity
12 must be effectively served with a complaint suing him in his
13 individual capacity in order for him to be joined to the action
14 as such).

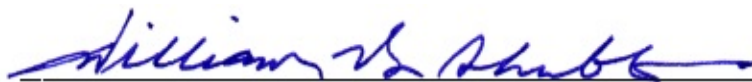
15 IT IS THEREFORE ORDERED that:

16 (1) the court's minute order of May 8, 2007, is hereby
17 WITHDRAWN;

18 (2) plaintiffs' motion to substitute John Chiang in his
19 official capacity be, and the same hereby is, GRANTED;

20 (3) plaintiffs' motion to substitute John Chiang in his
21 individual capacity be, and the same hereby is, DENIED.

22 DATED: June 4, 2007

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25 WILLIAM B. SHUBB
26 UNITED STATES DISTRICT JUDGE

27 ¹ Steve Westly was named as a defendant in both his
28 official and individual capacities. Therefore, he remains a
defendant in his individual capacity.